Hovsepian v. Apple, Inc.

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ATTEST

FOR THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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RICHARD W. WIEKING
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U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

DOCKET NO. 1665

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE ACACIA MEDIA TECHNOLOGIES CORP. PATENT LITIGATION

Acacia Media Technologies Corp. v. CSC Holdings, Inc., E.D. New York, C.A. No. 2:05-2036
Acacia Media Technologies Corp. v. Time Warner Cable, et al., S.D. New York, C.A. No. 1:05-4148

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

TRANSFER ORDER

Before the Panel is a motion brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by i) defendant CSC Holdings, Inc., in one Eastern District of New York action (*CSC*), and ii) defendants Time Warner Cable, Inc., and Bresnan Communications LLC in one Southern District of New York action (*Time*). Movant(s) in each action ask the Panel to vacate its order conditionally transferring the action to the Northern District of California for inclusion in the centralized pretrial proceedings occurring there in this docket before Judge James Ware. The plaintiff in both actions, Acacia Media Technologies Corp. (Acacia), supports transfer of both actions.

On the basis of the papers filed and hearing session held, the Panel finds that these two actions involve common questions of fact with actions in this litigation previously transferred to the Northern District of California, and that transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel is persuaded that transfer is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Northern District of California was a proper Section 1407 forum for actions involving allegations of infringement and invalidity of one or more of five Acacia patents sometimes referred to as the "Yurt family" of patents (after the last name of the inventor of the patents). *See In re Acacia Media Technologies Corp. Patent Litigation*, 360 F.Supp.2d 1377 (J.P.M.L. 2005). Not unlike certain parties' arguments raised in opposition to centralization when the Panel first considered the question of Section 1407 transfer in this docket, the parties opposing transfer of *CSC* and *Time* predicate much of their opposition on concerns over the impact that transfer will have on their actions, in view of the more advanced status of proceedings in other MDL-1665 actions. Now, as then, however, Section 1407 will permit all actions involving common Acacia patents to proceed in one litigation before a single transferee judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs, while ensuring that common parties and witnesses are not subjected to discovery demands which duplicate activity that has already occurred in constituent MDL-1665 actions. As continues to be the case, the transferee court remains free to make appropriate decisions regarding any impact that the earlier centralized actions may have on pretrial proceedings in the more recently filed *CSC* and *Time*.

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IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these two actions are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable James Ware for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

s/Terrell Hodges

Wm. Terrell Hodges
Chairman